



DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

RIN 0551-AB03

Dairy Tariff-Rate Quota Import Licensing Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the regulations that provide for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States (HTSUS). The rule suspends for an additional year the historical license reduction provision which would otherwise apply beginning with the 2023 quota year. This change will allow license holders additional time to adjust to challenging market conditions impacting the dairy sector.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by [docket number and/or RIN number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- E-mail: dairy-ils@fas.usda.gov. Include [docket number and/or RIN number] in the subject line of the message.

- Mail: Dairy Import Programs, Multilateral Affairs, Trade Policy and Geographic Affairs, Foreign Agricultural Service, United States Department of Agriculture; 1400 Independence Avenue SW STOP 1070; Washington, D.C. 20250.

- Hand Delivery / Courier: Dairy Import Programs, Multilateral Affairs, Trade Policy and Geographic Affairs, Foreign Agricultural Service, United States Department of Agriculture; 1400 Independence Avenue SW STOP 1070; Washington, D.C. 20250.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this interim final rule. Comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Riley, (202) 720 6868; or by e-mail at: Elizabeth.riley@usda.gov. Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact FAS-ReasonableAccommodation@usda.gov or Cynthia Stewart (Reasonable Accommodation Coordinator), cynthia.stewart@usda.gov.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS), under a delegation of authority from the Under Secretary of Agriculture, administers the Dairy Tariff-Rate Quota Import Licensing regulations codified at 7 CFR 6.20 through 6.36 that provide for the issuance of licenses to import certain dairy articles under TRQs as set forth in certain notes in Chapter 4 of the HTSUS. These dairy articles may be entered into the United States at the low-tier tariff only by or for the account of a person, as defined in the regulations, to whom such licenses have been issued and only in accordance with the terms and conditions of the regulations. Licenses are issued on a calendar year basis and each license authorizes the licensee to import a specified quantity and type of dairy article from a specified country of origin.

FAS issues three types of dairy import licenses: historical, non-historical (lottery), and designated. For all three license types, persons must apply each year between September 1 and October 15. Historical and designated licensees may apply for lottery licenses subject to certain conditions. Licensees may fail to qualify for a license for a specific item from a specific country in the following year if they do not meet certain requirements. Licensees must (i) apply for the license each year, (ii) pay an annual fee, and (iii) have imported at least 85 percent of the final license amount from the previous year. To avoid ineligibility due to the 85-percent rule, licensees may surrender up to 100 percent of the license, but must import 85 percent of any quantity not surrendered.

Section 6.25(b) of the regulations provides that beginning with the 2023 quota year, any historical licensee who surrenders more than 50 percent of the license amount for the same item from the same country during at least three of the most recent five years will be issued a historical license thereafter in an amount equal to the average amount imported under that license for those five quota years. FAS has suspended § 6.25(b) on four previous occasions, most recently for an additional seven years encompassing the 2016-2022 quota years.

This rule provides historical license holders additional time to adjust to changing market conditions by suspending implementation of § 6.25(b) through the end of quota year 2023. FAS recognizes that COVID-19 pandemic-related shipping delays have made economic conditions difficult for several of the past years. In addition, the United States imposed retaliatory tariffs on certain EU exports from October 2019 until June 2021, including certain dairy products, in response to the EU's failure to implement the World Trade Organization Dispute Settlement Body's recommendations in the dispute *EC and Certain member States—Measures Affecting Trade in Large Civil Aircraft* (DS316). The duties on dairy products, levied at 25% ad valorem, contributed to the volatile market conditions U.S. dairy importers have recently faced. Several dairy commodities that were

subject to these retaliatory tariffs stand to lose historical quantity if § 6.25(b) is not suspended. Overall, FAS estimates that allowing § 6.25(b) to go into effect in quota year 2023 would result in the reduction or elimination of approximately 18% of historical licenses. In addition, FAS analysis shows that fill rates for the lottery category for those commodities that stand to lose the most historical licenses remain low, when viewed over the course of the past five quota years.

REGULATORY ANALYSIS

Administrative Procedure Act

Pursuant to the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” (5 U.S.C. 553(b)(B)). As discussed above, FAS has determined that recent market events warrant suspending § 6.25(b) for quota year 2023.

To have a meaningful effect, the amendment suspending § 6.25(b) for the next quota year must take effect prior to the application period for quota year 2023, which begins September 1, 2022, and ends on October 15, 2022. For this reason, FAS finds good cause exists to issue the rule without notice and comment pursuant to 5 U.S.C. 553(b)(B), and without a delayed effective date pursuant to 5 U.S.C. 553(d)(3). Although this rule will take immediate effect, FAS invites interested persons to submit comments on the rule and will consider all relevant comments when determining whether further amendments to the regulation are needed.

Executive Order 12866

The rule has been determined to be not significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. The Administrator certifies that this rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This rule has been reviewed under E.O. 12988. This rule meets the applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The provisions of this rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. This rule will not have a retroactive effect. Before any judicial action may be brought forward regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

FAS has reviewed this rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule will not “have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

Executive Order 13175

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Executive Order 12630

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in E.O. 12630.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB's Office of Information and Regulatory Affairs has determined that this is not a “major rule” as defined by the Congressional Review Act (5 U.S.C. 804(2)).

List of Subjects in 7 CFR Part 6

Agricultural commodities, Dairy, Cheese, Imports, Procedural rules, Application requirements, Tariff-rate quota, Reporting and recordkeeping requirements.

Accordingly, for these reasons, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart B—Dairy Tariff-Rate Quota Import Licensing

1. The authority citation for subpart B continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97-258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103-465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Amend § 6.25 by revising paragraph (b) to read as follows:

§ 6.25 Allocation of licenses.

* * * * *

(b) *Historical licenses for the 2016 and subsequent quota years (Appendix 1).* A person issued a historical license for the current quota year will be issued a historical license in the same amount for the same article from the same country for the next quota year except that beginning with the 2024 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those 5 quota years.

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Daniel Whitley,

Administrator,

Foreign Agricultural Service.

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